LIBRARY
SUPREME COURT, U. S.

FILED
OCT 13 1973
MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-648

MADELINE WOLFE,

Petitioner

vs.

METROPOLITAN DADE COUNTY
and
ASHTON TYLER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND THE COURT OF APPEALS, THIRD DISTRICT STATE OF FLORIDA

ROBERT M. BRAKE
Attorney for Appellant
1830 Ponce de Leon Boulevard
Coral Gables, Florida 33134

INDEX

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2-3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-4
STATEMENT OF THE FACTS	4-6
REASONS FOR GRANTING THE WRIT	7-11
CONCLUSION	12

APPENDIX

FINAL JUDGMENT	App. 1
OPINION, DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT	App. 5
ORDER DENYING REHEARING, DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT	App. 8
ORDER, SUPREME COURT OF FLORIDA	App. 9

CITATIONS

PAGE

CONSTITUTION

Section 1, Amendment 14, U.S. Constitution 2, 3

STATUTES

28 USC 1257(3) 2
42 USC 1983 ..... 2, 3, 6
Civil Rights Act of 1964, Title VII 7

ORDINANCES

Section 2.40, Metropolitan Dade County Code 4
Section 2.42, Metropolitan Dade County Code 4

RULES

Rule 19, Supreme Court Rules 2

CASES

Arrington v. Massachusetts Bay Transportation Authority, 306 F. Supp. 1355 at 1358 9
Calhoun v. Doster, 324 F. S. 736 at 743 8
Griggs v. Duke Power Co., 401 U.S. 424, 28 L.Ed. 2d 158, 91 S. Ct. 849 ..... 3, 7, 8 10, 12
Metropolitan Dade County, et al, v. Wolfe, 274 So. 2d 584 2
Weber v. Aetna Casualty and Surety Company, 406 U.S. 164, 31 L.Ed. 2d 768, 92 S. Ct. 1400 10
Whitner v. Davis, C.A. Wash, 1960, 410 F. 2d 24 at 30. 8

IN THE

Supreme Court of the United States

October Term, 1973

No.

MADELINE WOLFE,

Petitioner,

vs.

METROPOLITAN DADE COUNTY
and
ASHTON TYLER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND THE COURT OF APPEALS, THIRD DISTRICT STATE OF FLORIDA

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida entered on the 30th day of July, 1973, and of the District Court of Appeal of Florida, Third District, entered on the 27th day of February, 1973, in the above case.

OPINIONS BELOW

The opinion of the District Court of Appeal, Third District, is reported in 274 So. 2d 584, and the opinion of the Florida Supreme Court has not yet been reported. Copies of said opinions are attached hereto in the Appendix to this Petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3) and Rule 19 of the Supreme Court Rules in that in the courts below Petitioner challenged certain employment practices of Metropolitan Dade County, Florida, a State governmental unit, as being in violation of Section 1, Amendment 14, of the United States Constitution, and Title 42, U.S.C., Section 1983. The courts below decided a federal question of substance not specifically determined by this Court and decided it in a way not in accord with applicable decisions of this Court.

QUESTIONS PRESENTED

Metropolitan Dade County adopted a merit system of employment and authorized its Personnel Director to adopt reasonable regulations thereunder. The Personnel Director adopted a table of maximum weights as applied to heights for all employees and prospective employees. Petitioner was refused employment on the grounds that she was overweight, even though the County admitted that the weight regulation was not related to the job for which she applied; she had performed the

same job successfully several years before, when she was at or above her present weight; and she was then in good health.

The trial court held that the weight regulation violated 42 U.S.C. 1983 and ordered the County to hire Petitioner. The District Court of Appeal, Third District, held that even though the regulation was not "job related" it had a "business purpose" and that it was authorized by this Court in the case of Griggs v. Duke Power Co., 401 U.S. 424, 28 L. Ed. 2d 158, 91 S. Ct. 849. The Florida Supreme Court declined jurisdiction.

The questions presented to this Court are:

1. Are maximum weight limits for prospective county employees, which admittedly have no relationship to the ability of the prospective employee to perform the job, void and unendorceable because they violate the equal protection clause of Section 1, Amendment 14, United States Constitution?

2. Are such weight limits prohibited by 42 U.S.C. 1983?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent portions of the Constitutional provisions and Statutues involved are as follows:

Section 1, Amendment 14, United States Constitution: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. 1983. Civil Action for Deprivation of Rights. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the